

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Structure and Practices of the Video Relay Service Program)	CG Docket No. 10-51
)	
Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities))	CG Docket No. 03-123
)	

COMMENTS OF SNAP TELECOMMUNICATIONS, INC.

Snap Telecommunications, Inc. (“Snap!VRS”) hereby files its response to the Consumer and Governmental Affairs Bureau’s Notice of Proposed Rulemaking seeking comment on the rates and compensation for Video Relay Service (VRS) for the 2011-12 Interstate Telecommunications Relay Service (TRS) Fund year¹ and on VRS market structure and compensation method proposals initially raised in a 2010 Notice of Inquiry related to the structure and practices of the VRS Program.²

In summary, Snap!VRS is of the view that costs of capital should be a factor in determining VRS rates and compensation to individual providers, that individual providers should not be compensated for the various costs incurred specific to raising capital, and that limitations should be placed on the regulatory treatment of various methods to raise capital –

¹*Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of the Video Relay Service Program*, Notice of Proposed Rulemaking, CG Docket No. 03-123; CG Docket No. 10-51 (rel. April 15, 2011).

²*Structure and Practices of the Video Relay Service Program*, Notice of Inquiry(2010 VRS NOI), CG Docket 10-51 (rel. June 28, 2010).

including disclosure requirements.

Snap!VRS believes that the determination of VRS rates and compensation structure must keep focus on the intent of the Americans with Disabilities Act and functional equivalency, which includes tiered rates on a multi-year basis.

Snap!VRS also supports the extension of the current VRS interim rates and compensation structure for the 2011-12 Fund year.

I. COST OF CAPITAL SHOULD BE A FACTOR IN DETERMINING VRS RATES AND COMPENSATING INDIVIDUAL PROVIDERS

A. Costs of Capital Should Not Be Excluded From VRS Rates and Compensating Individual Providers

Snap!VRS believes that the costs of capital – that is, interest costs and other covenant-mandated servicing costs associated with a provider’s capital structure – should be a factor in determining VRS rates and compensating individual providers. These costs are key components of a certified providers’ business and operating strategies, and they are fundamental to a provider’s ability to innovate and continually adapt its services and organization to the needs of the market.

Snap!VRS fully agrees and supports the evolution of video communications that associated technology and services become fully mainstream, are accessible to all, and are interoperable so consumers can freely connect with one another and access their choice of services. To this end, Snap!VRS has respectfully requested in its earlier communications that the Commission also keep foremost in its consideration of rates the significant investments already made by the certified VRS providers to attain the current environment of greater video options and features in services. Snap!VRS continues to urge the Commission to keep in mind the need to provide a reasonable return on VRS providers’ investments and facilitate the subsequent

evolution of the VRS market in a manner that enables providers to sustain competition and innovation for the benefit of consumers.³

This innovation and competition within the VRS industry can be supported through rate setting processes and a tiered rate system that allows providers to recover their operational costs of doing business, and incorporates and assures a reasonable return on providers' investments, which takes into consideration the prevailing financial market-driven costs of capital.

B. Individual Providers Should Not Receive Compensation for Costs Involved in the Various Methods Used Specific to Raising Capital

The costs incurred specific to the raising of capital, e.g., broker fees, should be the responsibility of VRS providers (their cost of entry, so to speak) and should not be included or addressed within the determination of VRS rates and compensation structure. This includes the upfront capital raised to fund the business, technology, legal and other investments necessary in order to first attain certification.

C. Limitations Should Be Placed on Regulatory Treatment of Various Methods to Raise Capital, Including Disclosure Requirements

Certified VRS providers, as for-profit businesses, must also operate within a regulatory environment they can rely upon to support the provision of quality products and services as well to assure a sustainable market environment which fosters innovation, competition, fair play, an environment that is aligned with the interests of consumers, as determined by consumers themselves.

Additionally, certified providers must have the independent flexibility to determine how best to make use of their business resources without involvement from the Commission. Such resource determinations can entail any number of things, including the investment in research

³*Ex Parte Notice*, Snap Telecommunications, Inc. CG Docket 10-51 (September 21, 2010).

and development for new products and services, adjustments to human, physical, informational and financial resources (e.g., expansion of personnel, procurement of technology, financing of facility leases, provision of dividend payments to investors, stock buybacks, and the like).

Snap!VRS took the lead and publicly disclosed its previously confidential data to provide the public with a better understanding regarding the appropriate level of funding for VRS to progress toward being fully ADA-compliant by becoming functionally equivalent service.⁴ Notwithstanding this however, Snap!VRS believes there should be no additional Commission involvement or disclosure requirement other than perhaps such reporting metrics needed to ensure that VRS providers are operating on an appropriate risk-adjusted basis and otherwise remain solvent, which will also require on the part of the FCC less arbitrary, more consistent treatment and due process when it comes to the issue of the withholding of reimbursements.

As an example, in the banking industry, this can be seen in the form of tiered capital ratios established to help mitigate some of the risks that banks take on, and is a regulatory reporting metric. Another metric example may be the working capital ratio, which evidences the degree to which companies maintain an appropriate amount of working capital relative to their debt, common within covenant structures associated with bank debt.

Snap!VRS prides itself on being a proven and efficient VRS provider, and has worked hard to bring operating costs steadily down while remaining competitive. Even so, consideration must be given to the true costs of Snap!VRS and other small providers, which includes the costs

⁴*Structure and Practices of the Video Relay Service Program*, Comments of Snap Telecommunications, Inc., in response to the Commission's Notice of Proposed Rulemaking, CG Docket No. 10-51 (July 22, 2010).

of capital – it has been and continues to be a challenge to remain in business, grow to achieve economy of scale, and realize a fair and reasonable return on their investment.⁵

As Snap!VRS has asserted in meetings with the Commission and Snap!VRS consumers, the business of providing VRS is a privilege, which is premised on the civil right of relay consumers to accessible communications. Snap!VRS supports transparency in requiring public disclosure of certain provider cost and demand data to the extent necessary to allow stakeholders to meaningfully assess the appropriateness of the compensation rates. Snap!VRS, however, also believes that limitations on the scope of disclosure are appropriate to allow providers to maintain confidential certain investments designed to provide it with a means to compete effectively.⁶

II. VRS RATES AND COMPENSATION STRUCTURE KEEPING FOCUS ON THE INTENT OF THE ADA AND FUNCTIONAL EQUIVALENCY

Snap!VRS wishes to take this opportunity to reiterate the importance of keeping the focus on the original intent of Title IV of the Americans with Disabilities Act (“ADA”) and its functional equivalency mandate for relay services.^{7 8}

Snap!VRS agrees that the ADA's mandate of functional equivalency must serve as the leading standard for assessing any action considered, proposed or taken with respect to VRS. Snap!VRS is also of the view that the reality of VRS users in that their experience is far short of what hearing people are accustomed to and expect in their use of telecommunications is not sufficiently captured or addressed at the policy level.⁹

⁵*Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of the Video Relay Service Program*, Notice of Proposed Rulemaking, CG Docket No. 03-123; CG Docket No. 10-51 (rel. April 15, 2011).

⁶*Id.*

⁷Americans with Disabilities Act (“ADA”) citation: Pub. L. No. 101-336, 104 Stat. 327, 42 U.S.C. § 12101 *et seq.*, July 26, 1990.

⁸Title IV of the ADA citation: Codified at 47 U.S.C. § 225 of the Communications Act of 1934, as amended.

⁹*Structure and Practices of the Video Relay Service Program*, Reply Comments of Snap Telecommunications, Inc., in response to the Commission’s Notice of Inquiry, CG Docket No. 10-51 (September 1, 2010).

Snap!VRS supports the recent document submitted by Consumer Groups entitled “*TRS Policy Statement – Functional Equivalency of Telecommunications Relay Services: Meeting the Mandate of the Americans with Disabilities Act.*” Consumer Groups define functional equivalency in the context of using relay services as follows: “Persons receiving or making relay calls are able to participate equally in the entire conversation with the other party or parties and they experience the same activity, emotional context, purpose, operation, work, service, or role (function) within the call as if the call is between individuals who are not using relay services on any end of the call”. Consumer Groups further delineate ADA-based goals and objectives to bring the TRS program into the 21st century.¹⁰

Snap!VRS supports Consumer Groups’ emphasis on functional equivalency and reiterates its view that tiered rates advance the functional equivalency mandate of the ADA by balancing the sustainability of the TRS Fund with providing equitable compensation for VRS providers. Tiered rates foster growth and development - they have enabled VRS providers to accomplish shorter hold times, better video displays, more reliable connections, higher quality video interpreting, ten digit numbering system usage, automatic 9-1-1 services, improved firmware and software, and enhanced features. Tiered rates benefit all providers in that they help to alleviate the impact of the higher costs that small and emerging providers face while benefiting consumers with greater choice of providers and healthy competition. Tiered rates also allow for predictable funding streams and permit providers to plan ahead their investments for research and development, personnel and technology. All of which contribute to functional equivalency.¹¹

¹⁰*Ex Parte Notice*, Consumer Groups, CG Docket 03-123; CG Docket No. 10-51 (April 12, 2011).

¹¹*Ex Parte Letter*, CSDVRS, Snap Telecommunications, Inc., Purple Communications, Inc., Convo Communications and AT&T Services, Inc. (collectively the “Providers”), CG Docket 10-51 (January 21, 2011).

Further, Snap!VRS has urged the Commission to maintain the current rates for Tiers I and II, or to slightly increase the rates and width of Tiers I and II to reflect operational cost increases, to account for excluded significant incremental costs of service, to preserve and promote the ability of smaller and emerging providers to compete, and to allow for provider capacity to continue progressing towards enabling functional equivalency through service and product enhancements. Snap!VRS also urged the Commission to continue the tiered rate program on a multi-year basis to ensure that providers have a stable and predictable foundation upon which to invest in high quality and innovative VRS choices for consumers.¹²

In adopting the tiered compensation rate, Commissioner Michael J. Copps stated that "[i]n doing so the Commission encourages competition for services while recognizing those that there are efficiencies when larger providers have accomplished economics of scale." He went further by stating that the Commission must closely monitor the tiered rate methodology and that "[i]t remains essential that going forward all of the stakeholders affected by these new rules, particularly members of the disability community, provide us with their input on where it is working well and where adjustments are needed."

If the Commission is to ensure a competitive market, the true costs of providing VRS in compliance with Title IV of the ADA's mandate of functional equivalency must be included in the rate.¹³

Commissioner Copp's remarks and this last statement remain relevant to this day.

¹²*Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of the Video Relay Service Program*, Comments of Snap Telecommunications, Inc. on the proposed 2010 rates, CG Docket No. 03-123 (May 14, 2010).

¹³*Id.* Statement of Commissioner Michael J. Copps, FC 07-186 (November 19, 2007).

III. EXTENSION OF CURRENT VRS INTERIM RATES AND COMPENSATION STRUCTURE TO THE 2011-12 FUND YEAR

Snap!VRS supports the Commission's tentative conclusion that extending the current VRS interim rates and compensation structure into the 2011-12 fund year would be appropriate. In its 2010 Order, the Commission stated that the interim rates reflected a balance between the goals of ensuring that VRS providers recover their reasonable costs from the Fund and ensuring quality and efficient service while the Commission considers reform of the practices and structure of VRS.¹⁴

Snap!VRS takes note of the Commission's diligent efforts to achieve this balance, which remains of the utmost concern. Snap!VRS also notes that the current Report and Order¹⁵ places additional cost burdens on certified VRS providers which should also be factored into the determination of future rates and compensation structure. Snap!VRS therefore urges the Commission to issue a Notice of Proposed Rulemaking prior to making such determination, to enable VRS providers and stakeholders alike with the opportunity to comment.

Again, Snap!VRS wishes to commend the Commission for being proactive in ensuring stability and certainty under the current compensation structure until final rules stemming from the *2010 VRS NOI* proceeding are decided.

IV. CONCLUSION

Based on the foregoing, Snap!VRS respectfully urges the Commission to include costs of capital in determining VRS rates and compensation to individual providers, to exclude from compensation to individual providers the various costs incurred specific to raising capital, and to

¹⁴*Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of the Video Relay Service Program*, Notice of Proposed Rulemaking, CG Docket No. 03-123; CG Docket No. 10-51 (rel. April 15, 2011).

¹⁵*Structure and Practices of the Video Relay Service Program*, Report and Order and Further Notice of Proposed Rulemaking, CG Docket 10-51 (rel. April 6, 2011).

place limitations on regulatory treatment of various methods to raise capital – including disclosure requirements.

Snap!VRS further urges the Commission in its deliberations on VRS rates and compensation structure to keep focus on the intent of the Americans with Disabilities Act and functional equivalency, which includes tiered rates on a multi-year basis.

Snap!VRS also supports the extension of the current VRS interim rates and compensation structure for the 2011-12 Fund year.

Respectfully submitted,

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